

## **REMARKS**

Applicant is in receipt of the Office Action mailed March 29, 2004. Claim 45 has been amended. Claims 44-97 remain pending in the case. Reconsideration of the present case is earnestly requested in light of the following remarks.

### **Petition to Claim Priority to Earlier Filed Patent Application**

Applicant has included herewith a petition for a priority claim to be accepted for the present application to claim priority as a continuation-in-part of U.S. Patent Application Serial No. 09/375,453, titled "System and Method for Color Characterization with Applications in Color Measurement and Color Matching", filed August 17, 1999, whose inventors were Siming Lin and Dinesh Nair. The priority claim was inadvertently omitted from the present application, and the entire delay between the time the claim was due under 37 CFR §1.78(a)(2) and the present time was unintentional. The Commissioner is authorized to charge the surcharge set forth in 37 CFR § 1.17(t) to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-46400/JCH.

### **Section 102 Rejections**

Claims 44-46, 48-49, 53-54, 56, 77-82, 88-90, and 95-97 were rejected under 35 U.S.C. 102(e) as being anticipated by Krumm (U.S. Patent No. 6,611,622, hereinafter "Krumm"). Applicant respectfully disagrees.

As noted above, Applicant has submitted herewith a petition to claim benefit of priority to a patent application filed on August 17, 1999, which pre-dates the filing date of Krumm, November 23, 1999. Applicant thus submits that Krumm does not anticipate Applicant's invention as claimed, and so claims 44-46, 48-49, 53-54, 56, 77-82, 88-90, and 95-97 are allowable. Removal of the 102 rejection of claims 44-46, 48-49, 53-54, 56, 77-82, 88-90, and 95-97 is earnestly requested.

## Section 103 Rejections

Claim 47 was rejected under 35 U.S.C. 103(a) as being unpatentable over Krumm (U.S. Patent No. 6,611,622, hereinafter “Krumm”) in view of Tao (U.S. Patent No. 5,799,105, hereinafter, “Tao”). Applicant respectfully disagrees.

Applicant notes that due to the claim to benefit of priority above, Krumm is not prior art to the present application, and so Krumm is not properly combinable with Tao for a 103 rejection, and so the 103 rejection is improper. Additionally, Applicant respectfully submits that since claim 47 depends from independent claim 44, which has been shown above to be allowable, claim 47 is similarly allowable. Additional arguments directed to Tao are provided below.

Claim 47 recites:

47. (Original) The method of claim 44, further comprising:  
for at least one region of the target image that matches the color features of the template image, displaying information on a graphical user interface indicating a degree to which color information of the region matches color information of the template image.

*Per Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985), it is insufficient *to select from the prior art the separate components of the inventor's combination*, using the blueprint supplied by the inventor.

Applicant notes that both Tao and Krumm teach many features and limitations that are not included in Applicant's invention as represented in claim 47, and so Applicant respectfully submits that the Examiner has simply selected those parts of Tao and Krumm that may relate to Applicant's invention as claimed, while omitting other features and limitations that teach away from Applicant's invention as claimed. For example, Tao teaches analyzing multiple views of the object, as well as computing a single composite hue (average color) value of the item, features not mentioned in claim 47. More importantly, Tao does not teach “automatically determining color features of the template image”, and “locating one or more regions of the target image that match the color features of the template image”, limitations which are included in claim 47 by way of dependency from claim 44.

Applicant also submits that Tao's grading values, e.g., "Premium", "Fancy", and "Ordinary" (col. 10, line 45), while correlating somewhat with color comparisons, clearly describe varieties or grades of produce, and do not themselves indicate degrees of color match with a template image. More specifically, Tao does not teach "for at least one region of the target image that matches the color features of the template image, displaying information on a graphical user interface indicating a degree to which color information of the region matches color information of the template image."

Thus, for at least the reasons provided above, Applicant submits that Tao fails to teach all of the features and limitations of claim 47, and so for at least these reasons, claim 47 is unobvious and patentable over Krumm and Tao, and is thus allowable. Removal of the 103 rejection of claim 47 is respectfully requested.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

## CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-45500/JCH.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☒ Petition Under 35 U.S.C. 120
- ☒ Notice of Change of Address
- ☐ Check in the amount of \$            for fees (        ).
- ☐ Other:

Respectfully submitted,



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